SUPREME COURT, U. S.
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1975

NO. 75-14

LOUISVILLE AND NASHVILLE RAILROAD COMPANY,
Appellant,

v.

Z. D. ATKINS, ET AL.,
Appellees.

On Appeal from the United States District Court
for the Middle District of Tennessee
Nashville Division

MOTION TO AFFIRM

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Pursuant to Rule 16 of the United States Supreme Court Rules, appellees respectfully move the Court to affirm the judgment of the United States District Court for the Middle District of Tennessee on the ground that it is manifest that the questions on which the decision of the cause depends are so unsubstantial as not to need further argument.

I.

THE CLASSIFICATION OF RAILROAD PROPERTY AS "PUBLIC UTILITY PROPERTY" FOR PURPOSES OF PROPERTY TAXATION RATHER THAN AS "INDUSTRIAL AND COMMERCIAL PROPERTY" IS WELL WITHIN THE RANGE OF A STATE'S DISCRETIONARY POWER TO ESTABLISH CLASSIFICATIONS IN THE LAYING OF TAXES.

A long line of authorities provided by this Honorable Court establishes that classifications for purposes of taxation are permissible under the equal protection clause of the Fourteenth Amendment; that the states have broad power to establish tax classification schemes; and that such classification schemes must be palpably arbitrary or invidiously discriminatory resting on no reasonable consideration of difference or policy before they will be deemed to offend the equal protection clause. *E.g., Kahn v. Shevin*, 416 U.S. 351 (1974); *Lehnhausen v. Lake Shore Auto Parts Co.*, 410 U.S. 356 (1973); *Allied Stores of Ohio v. Bowers*, 358 U.S. 522 (1959); *Walters v. City of St. Louis*, 347 U.S. 231 (1954); *State Board of Tax Comm'rs v. Jackson*, 283 U.S. 527 (1931); *Brown-Forman Co. v. Kentucky*, 217 U.S. 563 (1910).

The scope of the discretion permitted the states under the equal protection clause in establishing tax classification schemes was recently restated by Mr. Justice Douglas, speaking for a unanimous Court in *Lehnhausen v. Lake Shore Auto Parts Co., supra*:

> "The Equal Protection Clause does not mean that a State may not draw lines that treat one class of individuals different from the others. The test is whether the difference in treatment is an invidious discrimination . . . Where taxation is concerned and no specific federal right, apart from equal protection, is imperilled, the States have large leeway in making classifications and drawing lines which in their judgment produce reasonable systems of taxation . . ."
>
> 410 U.S. at 359.

The breadth of the leeway allowed the states in the area of taxation is also reflected in this Court's decision in *Allied Stores of Ohio v. Bowers, supra*, wherein it was held that a state, in establishing tax classifications, "is not required to resort to close distinctions or to maintain a precise, scientific uniformity with reference to composition, use or value." 358 U.S. at 527.

Article 2, Section 28 of the Tennessee Constitution prescribes four subclassifications of real property for property tax purposes: (a) Public Utility Property, to be assessed at 55% of its value; (b) Industrial and Commercial Property, to be assessed at 40% of its value; (c) Residential Property, to be assessed at 25% of its value; and (d) Farm Property, to be assessed at 25% of its value. 1 Tenn. Code Ann., 1974 Cum. Supp. 98. This section of the Tennessee Constitution also provides for three subclassifications of tangible personal property for property tax purposes: (a) Public Utility Property, to be assessed at 55% of value; (b) Industrial and Commercial Property, to be assessed at 30% of value; and (c) All Other Tangible Personal Property, to be assessed at 5% of its value. 1 Tenn. Code Ann., 1974 Cum. Supp. 99. The legislature of the State of Tennessee, in establishing a reasonable system of taxation under the classifications prescribed in Article 2, Section 28 of the Tennessee Constitution, exercised its judgment and placed the property of railroads, along with the properties of other transportation companies, in the "public utility property" classification. Tenn. Code Ann.,

sec. 67-601 (7) (Cum. Supp. 1974). Railroads were not singled out from other transportation companies for discriminatory tax treatment, nor were they arbitrarily selected for inclusion in an altogether illusory classification.

Historically this Court has viewed railroads as having distinctive characteristics and functions in society which make permissible separate and differential tax treatment. *E.g.*, *Nashville, C. & St. L. Ry. v. Browning*, 310 U.S. 362 (1940); *New York Rapid Transit Corp. v. City of New York*, 303 U.S. 573 (1938); *Southern Railway v. Watts*, 260 U.S. 519 (1923). Although appellant has questioned the wisdom of classifying railroad property in a public utility property category in view of changing economic conditions, the legislature of Tennessee in exercising its discretionary power to establish classifications in the laying of taxes presumably was free to consider those factors historically relied upon as grounds for such classification.

II.

THE DISTRICT COURT'S DETERMINATION THAT THE APPELLANT'S EVIDENCE CONCERNING THE ECONOMIC CONDITION OF THE RAILROAD INDUSTRY DID NOT RENDER THE CLASSIFICATION OF RAILROAD PROPERTY PALPABLY ARBITRARY OR INVIDIOUSLY DISCRIMINATORY WAS JUSTIFIED.

Against a background which not only recognizes the broad power of a state to establish tax classifications but also permits the differential tax treatment of railroad property, appellant has attempted to support a position which runs counter to this background by asserting that changed circumstances and conditions have effectively repudiated the application of all the criteria announced by

the courts in the past as justifying such discriminatory classification for tax purposes. The District Court found that appellant's proof in support of its contention tended "to show only that railroads, in general, are not as profitable as before and that certain benefits and powers peculiar to them, such as the right of eminent domain, are not as useful or as used as they once were." (Appx. A to Appellant's Jurisdictional Statement, p. 25). In the District Court's view, economic evidence of this type does not show invidious discrimination and is properly addressed to the legislature to be weighed along with other considerations in determining a tax policy which will best serve the interests of the people. See generally *Apache County v. Atchison, T. & S. F. Ry. Co.*, 106 Ariz. 856, 476 P.2d 657 (1970), *appeal dismissed* 401 U.S. 1005.

Appellees maintain that the District Court's determination was eminently justified. To adopt appellant's position would more narrowly restrict the legislative power of the states by equating palpable arbitrariness and invidious discrimination with relative reasonableness. This position, in turn, would subject tax classifications to constitutional attack where it could be contended that one classification is more reasonable than another with respect to particular taxpayers or properties, and would thereby require state legislatures to place taxpayers and properties in the most reasonable classifications to avoid contravening the equal protection clause. Appellees maintain that the holdings of this Court, as exemplified by *Lehnhausen v. Lake Shore Auto Parts Co.*, 416 U.S. 351 (1974), and *Allied Stores of Ohio v. Bowers*, 358 U.S. 522 (1959), militate against a position which would require the substitution of judicial judgment for legislative judgment in reviewing state tax classifications.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the judgment of the District Court should be affirmed.

Respectfully submitted,

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